

1 **DAVID R. PARTOVI**

2 PARTOVI LAW, P.S.
3 900 N. Maple St, Ste 102
4 Spokane, WA 99201
5 Phone (509) 270-2141
6 Fax (509) 326-6102
7 kelsey@partovilaw.com
8 Attorney for Defendant

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12
13 UNITED STATES OF AMERICA,
14 Plaintiff,
15 -vs-
16 DANIEL AUGUSTINE SOLIS,
17 Defendant.

18 NO. 2:20-CR-00179-TOR
19 MOTION TO WITHDRAW
20 GUILTY PLEA and
21 MEMORANDUM IN SUPPORT
22 **ORAL ARGUMENT REQUESTED**

23 TO: Rebecca Perez and Alison Gregoire, Assistant United States Attorneys.

24 COMES NOW Defendant, DANIEL AUGUSTINE SOLIS, by and through his
25 counsel, David R. Partovi, and moves to Court for a withdraw of his guilty plea
26 entered in this case.

27 THIS MOTION is based upon the Memorandum of Law appended hereto. If
28 necessary, a sworn statement from Mr. Solis can be provided. Given his remote
29 location, that has not been drafted but can be provided.

30 DATED this 17th of April, 2025.

31 **PARTOVI LAW, P.S.**

32 s/ David R. Partovi

33 DAVID R. PARTOVI, WSBA #30611
34 Attorney for Defendant

MEMORANDUM OF LAW

RELEVANT FACTS

On November 5, 2024, the Defendant, Daniel Solis, changed his plea to guilty during his criminal trial. His plea was given to and accepted by Judge Rice. The Defendant was accompanied and assisted by counsel during this plea. Finding that all of the requirements for the entry of a guilty plea by the defendant had been met, Judge Rice entered an Order accepting the Defendants plea of guilty on the same day.

Almost immediately following his guilty plea being entered, Mr. Solis began working towards withdrawing his guilty plea with his former counsel. However, once it became clear Mr. Solis would not be able to go forward on that matter with his former counsel, he began working with Mr. Partovi on the matter.

Mr. Solis seeks to withdraw his guilty plea due to a fundamental misunderstanding of the specifics of his plea and the consequences that would flow from his plea. Specifically, Mr. Solis did not understand, nor was it fully explained to him, that he was waving his right to a trial *entirely*, not just waving his right to his current trial. It is conceded that, for those of us who live in this world, it may seem unreasonable that one would consider a guilty plea to be a waiver of this trial but not all trials. To Mr. Solis, however, this was his confusion. He states that he did not realize that he was waiving all trials, he thought it was just that one. He is willing to sign a sworn

1 statement to that effect, but he is located in Benton County so this motion is made by
2 way of proffer.

3 **RELEVANT LAW**

4 Under Federal Rule of Criminal Procedure 11(b), in order for a plea to be accepted,
5 the court must inform the defendant of several different things and ensure that he
6 understands them. Specifically, the court must ensure that the defendant understands
7 the government's right to use against the defendant any statement that the defendant
8 gives under oath; the right not to plead guilty, or having already so pleaded, to persist
9 in that plea; the right to a jury trial; the right to be represented by counsel – and if
10 necessary have the court appoint counsel – at trial and at every other stage of the
11 proceeding; the right at trial to confront and cross – examine witnesses, to be protected
12 from compelled self-incrimination, to testify and present evidence, and to compel the
13 attendance of witnesses; the defendant's waiver of these trial rights if the court accepts
14 a plea of guilty or nolo contendere; the nature of each charge to which the defendant is
15 pleading; any maximum possible penalty, including imprisonment, fine, and term of
16 supervised release; any mandatory minimum penalty; any applicable forfeiture; the
17 court's authority to order restitution; the court's authority to impose a special
18 assessment; in determining a sentence, the court's obligation to calculate the applicable
19 sentencing-guideline range and to consider that range, possible departures under the
20 Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a); and

1 the terms of any plea-agreement provision waiving the right to appeal or to collaterally
2 attack the sentence; and that, if convicted, a defendant who is not a United States
3 citizen may be removed from the United Staes, denied citizenship, and denied
4 admission to the United States in the future. See, generally, Fed. R. Cr. Pro
5 11(b)(1)(A)-(N). The rules further state that before a plea of guilty is accepted, the
6 court must ensure that the plea is voluntary and that there is a factual basis for the plea.
7 In order for a plea to be done knowingly, the defendant “must understand the nature of
8 the three critical constitutional rights that are waived by his plea: the right to a jury
9 trial, the right to confront his accuser, and the privilege against self-incrimination.”
10 *Tanner v. McDaniel*, 493 F.3d 1135, 1147 (9th Cir. 2007)(citing *Boykin v. Alabama*,
11 295 U.S. 238, 243-44). A plea must also be voluntary. A plea will be considered
12 involuntary if it results from threats, unlawful coercion, false or illicit promises,
13 mistreatment, mis-advisement of required rights, or misunderstanding. See *Sanchez v.*
14 *United States*, 50 F.3d 1448, 1455 (9th Cir. 1995). It is largely based on his
15 misunderstanding that Mr. Solis seeks to withdraw his plea.
16

17 The Federal Rules of Criminal Procedure set out the requirements for
18 withdrawing a guilty plea. Federal Rule of Criminal Proceeding 11(d), in its relevant
19 part, states that “a defendant may withdraw a plea of guilty … after the court accepts
20 the plea, but before it imposes the sentence if … the defendant can show a fair and just
21 reason for requesting the withdrawal.”
22

1 Case law has established that “[f]air and just reasons for withdrawal include
2 inadequate Rule 11 plea colloquies, newly discovered evidence, intervening
3 circumstances, or any other reason for withdrawing the plea that did not exist when the
4 defendant entered his plea.” *United States v. Jones*, 472 F.3d 1136, 1141 (9th Cir.
5 2007) (quoting *United States v. Ortega-Ascanio*, 376 F.3d 879, 883 (9th Cir. 2004)).
6 Additionally, case law also instructs us that while the defendant has the burden of
7 showing the fair and just reason for withdrawing a plea, that standard should be
8 applied liberally. See *United States v. Nagra*, 147 F.3d 875, 880 (9th Cir. 1998). To
9 prove that an error in the plea has affected substantial rights, and can therefore be
10 withdrawn, the Defendant must show “a reasonable probability that, but for the error,
11 he would not have entered the plea.” *United States v. Domingez Benitez*, 542 U.S.
12 74,83 (2004).
13

14 **ARGUMENT**
15

16 A. The Court should allow the Defendant to withdraw his plea of guilty due to his lack
17 of understanding regarding consequences of his plea
18

19 In order for a court to accept a defendant’s plea of guilty, the court must ensure
20 that the defendant has been made aware of all of the information included in Federal
21 Rule of Criminal Procedure 11, and must also ensure that the plea is knowing and
22 voluntary. The defendant “must be understand the three constitutional rights that are
23 waived by his plea: the right to a jury trial, the right to confront his accuser, and the
24 privilege against self-incrimination.” *Tanner v. McDaniel*, 493 F.3d at 1147. Here, the
25
26

1 court should allow the Defendant to withdraw his guilty plea because at the time his
2 plea was entered, he did not have a sufficient understanding of the *scope* of his waiver
3 of his Constitutional right to trial.
4

5 Counsel understands that the following sentence does not make sense, but Mr.
6 Solis states that he entered a plea of guilty because he wanted his previous counsel to
7 employ a defense of Not Guilty by Reason of Insanity. When that defense was not
8 employed, Mr. Solis pled guilty because he thought that if he pled guilty, that would be
9 the quickest way to get a new trial, and at this new trial he could have his attorney
10 present that defense. He was unaware that he was waiving his right to have a different
11 jury trial and did not understand what the full ramifications for pleading guilty were.
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13

14 In the plea colloquy, the court informed the Defendant of his waiver of certain
15 rights, but at the exact moment that the Court informed Mr. Solis that he was waiving
16 his right to a jury trial, Mr. Solis stopped the proceedings and had a question for
17 counsel. ECF 384 is the filing of the change of plea transcript and on page 5, lines 9-
18 read as follows:
19
20

21 [THE COURT]

22 If I accept your guilty pleas here today, you'll give up the -- those jury trial
23 rights. Do you understand that?
24

25 THE DEFENDANT: Yes.

26 THE COURT: Now, the charge of conspiracy to sexually exploit a child --

1 MS. BAGGETT: Your Honor, could I have one second? The defendant has a
2 question.

3 THE COURT: Yeah.

4 (Off the record.)

5 MS. BAGGETT: Thank you, your Honor.

6 Thereafter, the Court sought to have Mr. Solis state what he did in his own words what
7 he did to violate the law. His lawyer made a factual proffer as follows:

8 MS. BAGGETT: Thank you.

9 The defendant agrees that he forced Audree Pederson to make a video of
10 herself giving oral sex to Minor No. 1. He intended for Audree Pederson to
11 produce child pornography. As to Count 4, he agrees that he accessed Audree
12 Pederson's Verizon phone account and sent from that a video depicting
13 Audree Pederson performing oral sex on Minor No. 1, and he was aware that
14 that was child pornography.

15 Your Honor continued:

16 Mr. Solis, do you agree with those statement of facts?

17 THE DEFENDANT: I do.

18 Mr. Solis asserts that he did not understand that he was waiving any future
19 right to a jury trial and that it was his understanding that he was waiving only
20 the trial that had been underway to that point.

1
CONCLUSION

2 The Court and Counsel engage in this procedure day in and day out and
3 this record appears to clearly reflect that Mr. Solis understood his rights, had the
4 advice of competent counsel and made a knowing and voluntary waiver of his
5 rights. Counsel recognizes that it is not reasonable for a court to ask a defendant
6 if they understand that they are waiving any possibility of trial in the future. But
7 Federal Rule of Criminal Procedure 11 requires that Mr. Solis fully understood
8 the scope of his waiver and it is respectfully submitted that he did not and
9 should be permitted to withdraw his guilty plea for this reason.
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14 DATED this 17th of April, 2025

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PARTOVI LAW, P.S.

17
18 *s/ David R. Partovi*
DAVID R. PARTOVI, WSBA #30611
Attorney for Defendant
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CERTIFICATION

I hereby certify that on 17th of April, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF System which I will sent notification of such filing to the following, and/or I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Richard Barker, Acting United States Attorney
Rebecca Perez, AUSA
Alison Gregoire, AUSA
U S Attorney's Office - SPO
920 W Riverside Suite 300
P O Box 1494
Spokane, WA 99210-1494
Telephone: 509-353-2767

PARTOVI LAW, P.S.

s/ David R. Partovi
DAVID R. PARTOVI, WSBA #30611
Attorney for Defendant